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THE UNITED STATES PATENT AND TRADEMARK OFFICE

DATE: 9/1/2005

RE: Serial No.: 09/433,257  
Docket No.: PHA 23782

TO: Examiner: Wen Tai Lin  
Art Unit: 2154  
Fax Number: (571) 273-8300

FROM: Michael J. Ure, Reg. No. 33,089  
Telephone: (408) 474 - 9077

TRANSMISSION INCLUDES: 37 Pages (including cover sheet)  
Appeal Brief (in triplicate) - 12 pages

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**Before the Board of Patent Appeals and Interferences**

**In re the Application**

**Inventor** : **Shteyn**  
**Application No.** : **09/433,257**  
**Filed** : **November 4, 1999**  
**For** : **PARTITIONING OF MP3 CONTENT FILE FOR  
EMULATING STREAMING**

**APPEAL BRIEF**

**On Appeal from Group Art Unit 2154**

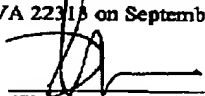
**Date: September 1, 2005**

**By: Michael Ure**  
**Attorney for Applicant**  
**Registration No. 33,089**

**Certificate of Fax/Mailing Under 37 CFR 1.8**

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Daniel Michalek  
(Name)

 01-Sep-05  
(Signature and Date)

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**RELATED PROCEEDINGS**

**EVIDENCE**

**TABLE OF CASES**

**NONE**

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**I. REAL PARTY IN INTEREST**

The real party in interest is the assignee of the present application, Philips Electronics North America Corporation, and not the party named in the above caption.

**II. RELATED APPEALS AND INTERFERENCES**

With regard to identifying by number and filing date all other appeals or interferences known to Appellant which will directly effect or be directly affected by or have a bearing on the Board's decision in this appeal, Appellant is not aware of any such appeals or interferences.

**III. STATUS OF CLAIMS**

Claims 2-6 and 12-22 are pending, stand finally rejected, and form the subject matter of the present appeal.

**IV. STATUS OF AMENDMENTS**

All amendments have been entered. No amendment after final rejection has been submitted.

**V. SUMMARY of the CLAIMED SUBJECT MATTER**

The present invention relates to a flexible, client-driven method of media retrieval and presentation, as well as an intelligent client device for carrying out such method. In an exemplary embodiment, the method uses a parseable control information file such as an XML file. Media retrieval and presentation begins with retrieval and parsing of the

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control information file. A control script is then run by an XML interpreter, using output from the XML parser. In general, the control script retrieves files, or segments of the media presentation, from one or more servers in a computer network for sequential payout. Insofar as the particulars of which files are retrieved, when and from where, however, the control script offers great flexibility. For example, two or more alternative files may be provided corresponding to the same section of a media presentation, with the client device selecting between the alternatives based on device capability, for example, or network conditions, or other considerations.

Independent claim 14 relates to a method of, at a client device, forming a media presentation from multiple related files, including a control information file, stored on one or more server computers within a computer network. The control information file is downloaded to the client device. Based on parsing of the control information, the client device retrieves a first file and uses contents of the first file to begin a media presentation, concurrent with the media presentation retrieves a next file, and uses content of the next file to continue the media presentation.

Independent claim 17 relates to a method of storing media presentation information within a computer network including multiple server computers. A control information file of a format to be parsed by a client device is stored on a server computer. Multiple related files accessible by the client device are stored on one or more server computers to, based on parsing of the control information file, form a media presentation from the multiple related files.

Independent claim 20 relates to a client device for forming a media presentation from multiple related files stored on server computers within a computer network. There

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are provided means for downloading files to the client device; means for parsing a control information file; and means for, based on parsing of the control information file, retrieving a first file and using contents of the first file to begin a media presentation, concurrent with the media presentation retrieving a next file, and using content of the next file to continue the media presentation.

**VI. GROUND S of REJECTION to be REVIEWED ON APPEAL**

The issues in the present matter are whether:

1. claims 4-6 and 12-22 are unpatentable over Cohen in view of McLain.

APPEAL  
Serial No.: 09/433,257**VII. ARGUMENT****I. Rejection of Claims 4-6 and 12-22 as unpatentable over Cohen in  
view of McLain**

Cohen relates to streaming of audio content. As described in column 6 of Cohen, clicking a link associated with the "connection file" of a desired media presentation causes an interactive display application—i.e., a proprietary media player—to be activated. The media player knows *a priori* the format of the connection file, which therefore need not be parsed. The connection file in Cohen is received and acted upon by the interactive display application, or media player (*not* a browser, for example). The connection file and the media player must be updated, if at all, in lock-step. The resulting system is rigid and inflexible.

The rejection states in part:

Cohen taught the invention as substantially as claimed including ... the client device parsing the control information file [58, Fig. 5; col. 6, lines 26-40; i.e., the interactive display application program must parse the connection file in order to obtain the reference for segment file and its associated status]....

\* \* \*

Cohen does not specifically teach how the connection file is formed and using what format.... However, McLain...teaches that the control information file may be written in the form of XML file and use the browser's parser for extracting parameters therein [McLain; see col. 1, lines 43-65].

It would have been obvious...to have used XML as an alternative format for composing Cohen's connection file because XML is well known for its flexibility, with which it would make Cohen's connection file more dynamic and adaptable for containing the rather sophisticated file status information [col. 6, lines 26-40].

With respect to McLain, The system of McLain differs substantially from that of the claimed invention. McLain essentially teaches filtering content downloaded from an internet site according to a user profile for storage and use on a mobile device (i.e., offline browsing of internet content). The content may be downloaded to a PC and

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transferred to the mobile device, or may be downloaded directly to the mobile device. Regardless, in McLain, the content provider is not required to adapt to the system architecture by making available separate script files and data files. Hence McLain does not teach or suggest the salient feature of *downloading a control information file stored on a server computer*, parsing the same, and based on such parsing, retrieving (from a server) a first file to begin a media presentation, etc.; rather, McLain teaches away from this feature. There is no teaching or suggestion in McLain that the Channel Definition Format (CDF) file referred to in the background section is downloaded from the server preparatory to downloading content (e.g., segmented content) from the server.

The proposed combination of Cohen and McLain is the product of impermissible hindsight. There is nothing *in the references themselves* that would teach or suggest using XML for the connection file of Cohen.

More, particularly, Cohen makes no mention of XML or the supposed need for flexibility. McLain's teachings in regard to XML are simply that it may be used for purposes of a Channel Definition Format used to render content during offline browsing. Essentially, a CDF entry is created for each "qualifying" content element to be rendered on the mobile device, which may include both visual elements and audio elements. The CDF file is used to implement a filtering function.

The filtering concept for offline browsing of McLain, however, is not directly applicable to the streaming arrangement of Cohen. Streaming, of course, implies a continuous online connection. Furthermore, how techniques like those of McLain's might be applied to filtering a media presentation of the type contemplated in Cohen is not immediately apparent.

McLain itself does not so much as contain any teaching why XML is chosen for the CDF file.



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Implicitly, then, the rationale for the rejection may be restated as follows: "Cohen does not teach the use of XML (or other format requiring parsing in accordance with the claims) for its connection file. XML was known at the time the invention was made, and was furthermore known to afford flexibility. Therefore it would have been obvious to use XML for the connection file of Cohen to achieve the flexibility offered by XML." One could just as well say that it would have been obvious to use XML for everything, in the name of flexibility, or that the use of XML constitutes an obvious "design choice." Such a statement does not satisfy the threshold of obviousness required under well-established precedent.

Accordingly, the Cohen and McLain references cannot be said to render obvious the inventions recited in claims 14, 17 and 20.

With regard to dependent claims 2-6, 12, 13, 15 and 16, dependent claims 18 and 19, and dependent claims 21 and 22, these claims depend from independent claims 14, 17 and 20, respectively, which have been shown to be patently distinguishable over the cited reference. Accordingly, these claims are also patently distinguishable and allowable over the cited references by virtue of their dependency upon an allowable base claims.

In view of the above, applicant submits that all of the above referred-to claims are patentable over the teachings of the cited references.

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### **VIII. CONCLUSION**

In view of the above analysis, it is respectfully submitted that the referenced teachings, whether taken individually or in combination, fail to anticipate or render obvious the subject matter of any of the present claims. Therefore, reversal of all outstanding grounds of rejection is respectfully solicited.

Date: September 1, 2005

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By: Michael Ure  
Attorney for Applicant  
Registration No. 33,089

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# **IX. APPENDIX: THE CLAIMS ON APPEAL**

2. The method of claim 14, wherein partitioning of media presentation information between the multiple related files is determined by information about the client.

3. The method of claim 14, wherein partitioning of media presentation information between the multiple related files is determined by information about the computer network.

4. The method of claim 14, wherein the media presentation comprises an audio presentation.

5. The method of claim 14, wherein the media presentation comprises a video presentation.

6. The method of claim 14, wherein partitioning of media presentation information between the multiple related files is described within the control information file using tags corresponding to respective files.

12. The device of claim 18, wherein:  
- the device interprets the control information to retrieve multiple files from the computer network for sequential play-out.

13. The device of claim 12, wherein:  
- the means for parsing comprises an XML parser; and  
- the means for retrieving and using comprises an XML interpreter.

14. A method of, at a client device, forming a media presentation from multiple related files, including a control information file, stored on one or more server computers within a computer network, the method comprising:

downloading the control information file to the client device;  
the client device parsing the control information file; and  
based on parsing of the control information file, the client device:  
retrieving a first file and using contents of the first file to begin a media presentation;  
concurrent with the media presentation, retrieving a next file;  
and  
using content of the next file to continue the media presentation.

15. The method of claim 14 wherein the control information file is an XML file.

16. The method of claim 15, wherein the XML file identifies multiple alternative files corresponding to a given segment of the media presentation, further comprising selecting and retrieving one of the multiple alternative files.

17. A method of storing media presentation information within a computer network including multiple server computers, the method comprising:

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storing on a server computer a control information file of a format to be parsed by a client device; and  
storing on one or more server computers multiple related files accessible by the client device to, based on parsing of the control information file, form a media presentation from the multiple related files.

18. The method of claim 17, wherein the control information file is an XML file.

19. The method of claim 18, wherein the XML file identifies multiple alternative files corresponding to a given segment of the media presentation.

20. A client device for forming a media presentation from multiple related files stored on server computers within a computer network, comprising:  
means for downloading files to the client device;  
means for parsing a control information file; and  
means for, based on parsing of the control information file:  
retrieving a first file and using contents of the first file to begin a media presentation;  
concurrent with the media presentation, retrieving a next file;  
and  
using content of the next file to continue the media presentation.

21. The method of claim 20, wherein the control information file is an XML file.

22. The method of claim 21, wherein the XML file identifies multiple alternative files corresponding to a given segment of the media presentation, the means for retrieving comprising means for selecting and retrieving one of the multiple alternative files.

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**X. APPENDIX: RELATED PROCEEDINGS**

**NONE**

**XI. APPENDIX: EVIDENCE**

**NONE**

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**In re the Application**

**Inventor** : **Shteyn**  
**Application No.** : **09/433,257**  
**Filed** : **November 4, 1999**  
**For** : **PARTITIONING OF MP3 CONTENT FILE FOR  
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**APPEAL BRIEF**

**On Appeal from Group Art Unit 2154**

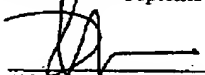
**Date: September 1, 2005**

**By: Michael Ure**  
**Attorney for Applicant**  
**Registration No. 33,089**

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Daniel Michalek  
(Name)

 01-Sep-05  
(Signature and Date)

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Daniel Michalek  
(Name)

 01-Sep-05  
(Signature and Date)

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**RELATED PROCEEDINGS**

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The real party in interest is the assignee of the present application, Philips Electronics North America Corporation, and not the party named in the above caption.

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Claims 2-6 and 12-22 are pending, stand finally rejected, and form the subject matter of the present appeal.

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The present invention relates to a flexible, client-driven method of media retrieval and presentation, as well as an intelligent client device for carrying out such method. In an exemplary embodiment, the method uses a parseable control information file such as an XML file. Media retrieval and presentation begins with retrieval and parsing of the

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Independent claim 14 relates to a method of, at a client device, forming a media presentation from multiple related files, including a control information file, stored on one or more server computers within a computer network. The control information file is downloaded to the client device. Based on parsing of the control information, the client device retrieves a first file and uses contents of the first file to being a media presentation, concurrent with the media presentation retrieves a next file, and uses content of the next file to continue the media presentation.

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Cohen relates to streaming of audio content. As described in column 6 of Cohen, clicking a link associated with the "connection file" of a desired media presentation causes an interactive display application—i.e., a proprietary media player—to be activated. The media player knows *a priori* the format of the connection file, which therefore need not be parsed. The connection file in Cohen is received and acted upon by the interactive display application, or media player (*not* a browser, for example). The connection file and the media player must be updated, if at all, in lock-step. The resulting system is rigid and inflexible.

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Cohen taught the invention as substantially as claimed including ... the client device parsing the control information file [58, Fig. 5; col. 6, lines 26-40; i.e., the interactive display application program must parse the connection file in order to obtain the reference for segment file and its associated status]....

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Cohen does not specifically teach how the connection file is formed and using what format.... However, McLain...teaches that the control information file may be written in the form of XML file and use the browser's parser for extracting parameters therein [McLain; see col. 1, lines 43-65].

It would have been obvious...to have used XML as an alternative format for composing Cohen's connection file because XML is well known for its flexibility, with which it would make Cohen's connection file more dynamic and adaptable for containing the rather sophisticated file status information [col. 6, lines 26-40].

With respect to McLain, The system of McLain differs substantially from that of the claimed invention. McLain essentially teaches filtering content downloaded from an internet site according to a user profile for storage and use on a mobile device (i.e., offline browsing of internet content). The content may be downloaded to a PC and



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transferred to the mobile device, or may be downloaded directly to the mobile device. Regardless, in McLain, the content provider is not required to adapt to the system architecture by making available separate script files and data files. Hence McLain does not teach or suggest the salient feature of *downloading a control information file stored on a server computer*, parsing the same, and based on such parsing, retrieving (from a server) a first file to begin a media presentation, etc.; rather, McLain teaches away from this feature. There is no teaching or suggestion in McLain that the Channel Definition Format (CDF) file referred to in the background section is downloaded from the server preparatory to downloading content (e.g., segmented content) from the server.

The proposed combination of Cohen and McLain is the product of impermissible hindsight. There is nothing *in the references themselves* that would teach or suggest using XML for the connection file of Cohen.

More, particularly, Cohen makes no mention of XML or the supposed need for flexibility. McLain's teachings in regard to XML are simply that it may be used for purposes of a Channel Definition Format used to render content during offline browsing. Essentially, a CDF entry is created for each "qualifying" content element to be rendered on the mobile device, which may include both visual elements and audio elements. The CDF file is used to implement a filtering function.

The filtering concept for offline browsing of McLain, however, is not directly applicable to the streaming arrangement of Cohen. Streaming, of course, implies a continuous online connection. Furthermore, how techniques like those of McLain's might be applied to filtering a media presentation of the type contemplated in Cohen is not immediately apparent.

McLain itself does not so much as contain any teaching why XML is chosen for the CDF file.

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Implicitly, then, the rationale for the rejection may be restated as follows: "Cohen does not teach the use of XML (or other format requiring parsing in accordance with the claims) for its connection file. XML was known at the time the invention was made, and was furthermore known to afford flexibility. Therefore it would have been obvious to use XML for the connection file of Cohen to achieve the flexibility offered by XML." One could just as well say that it would have been obvious to use XML for everything, in the name of flexibility, or that the use of XML constitutes an obvious "design choice." Such a statement does not satisfy the threshold of obviousness required under well-established precedent.

Accordingly, the Cohen and McLain references cannot be said to render obvious the inventions recited in claims 14, 17 and 20.

With regard to dependent claims 2-6, 12, 13, 15 and 16, dependent claims 18 and 19, and dependent claims 21 and 22, these claims depend from independent claims 14, 17 and 20, respectively, which have been shown to be patently distinguishable over the cited reference. Accordingly, these claims are also patently distinguishable and allowable over the cited references by virtue of their dependency upon an allowable base claims.

In view of the above, applicant submits that all of the above referred-to claims are patentable over the teachings of the cited references.

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Implicitly, then, the rationale for the rejection may be restated as follows: "Cohen does not teach the use of XML (or other format requiring parsing in accordance with the claims) for its connection file. XML was known at the time the invention was made, and was furthermore known to afford flexibility. Therefore it would have been obvious to use XML for the connection file of Cohen to achieve the flexibility offered by XML." One could just as well say that it would have been obvious to use XML for everything, in the name of flexibility, or that the use of XML constitutes an obvious "design choice." Such a statement does not satisfy the threshold of obviousness required under well-established precedent.

Accordingly, the Cohen and McLain references cannot be said to render obvious the inventions recited in claims 14, 17 and 20.

With regard to dependent claims 2-6, 12, 13, 15 and 16, dependent claims 18 and 19, and dependent claims 21 and 22, these claims depend from independent claims 14, 17 and 20, respectively, which have been shown to be patently distinguishable over the cited reference. Accordingly, these claims are also patently distinguishable and allowable over the cited references by virtue of their dependency upon an allowable base claims.

In view of the above, applicant submits that all of the above referred-to claims are patentable over the teachings of the cited references.

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### **VIII. CONCLUSION**

In view of the above analysis, it is respectfully submitted that the referenced teachings, whether taken individually or in combination, fail to anticipate or render obvious the subject matter of any of the present claims. Therefore, reversal of all outstanding grounds of rejection is respectfully solicited.

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### **VIII. CONCLUSION**

In view of the above analysis, it is respectfully submitted that the referenced teachings, whether taken individually or in combination, fail to anticipate or render obvious the subject matter of any of the present claims. Therefore, reversal of all outstanding grounds of rejection is respectfully solicited.

Date: September 1, 2005

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**IX. APPENDIX: THE CLAIMS ON APPEAL**

2. The method of claim 14, wherein partitioning of media presentation information between the multiple related files is determined by information about the client.
3. The method of claim 14, wherein partitioning of media presentation information between the multiple related files is determined by information about the computer network.
4. The method of claim 14, wherein the media presentation comprises an audio presentation.
5. The method of claim 14, wherein the media presentation comprises a video presentation.
6. The method of claim 14, wherein partitioning of media presentation information between the multiple related files is described within the control information file using tags corresponding to respective files.
12. The device of claim 18, wherein:
  - the device interprets the control information to retrieve multiple files from the computer network for sequential play-out.
13. The device of claim 12, wherein:
  - the means for parsing comprises an XML parser; and
  - the means for retrieving and using comprises an XML interpreter.
14. A method of, at a client device, forming a media presentation from multiple related files, including a control information file, stored on one or more server computers within a computer network, the method comprising:
  - downloading the control information file to the client device;
  - the client device parsing the control information file; and
  - based on parsing of the control information file, the client device:
    - retrieving a first file and using contents of the first file to begin a media presentation;
    - concurrent with the media presentation, retrieving a next file;
    - and
    - using content of the next file to continue the media presentation.
15. The method of claim 14 wherein the control information file is an XML file.
16. The method of claim 15, wherein the XML file identifies multiple alternative files corresponding to a given segment of the media presentation, further comprising selecting and retrieving one of the multiple alternative files.
17. A method of storing media presentation information within a computer network including multiple server computers, the method comprising:



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# **IX. APPENDIX: THE CLAIMS ON APPEAL**

2. The method of claim 14, wherein partitioning of media presentation information between the multiple related files is determined by information about the client.
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4. The method of claim 14, wherein the media presentation comprises an audio presentation.
5. The method of claim 14, wherein the media presentation comprises a video presentation.
6. The method of claim 14, wherein partitioning of media presentation information between the multiple related files is described within the control information file using tags corresponding to respective files.
12. The device of claim 18, wherein:
  - the device interprets the control information to retrieve multiple files from the computer network for sequential play-out.
13. The device of claim 12, wherein:
  - the means for parsing comprises an XML parser; and
  - the means for retrieving and using comprises an XML interpreter.
14. A method of, at a client device, forming a media presentation from multiple related files, including a control information file, stored on one or more server computers within a computer network, the method comprising:
  - downloading the control information file to the client device;
  - the client device parsing the control information file; and
  - based on parsing of the control information file, the client device:
    - retrieving a first file and using contents of the first file to begin a media presentation;
    - concurrent with the media presentation, retrieving a next file;
    - and
    - using content of the next file to continue the media presentation.
15. The method of claim 14 wherein the control information file is an XML file.
16. The method of claim 15, wherein the XML file identifies multiple alternative files corresponding to a given segment of the media presentation, further comprising selecting and retrieving one of the multiple alternative files.
17. A method of storing media presentation information within a computer network including multiple server computers, the method comprising:

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storing on a server computer a control information file of a format to be parsed by a client device; and  
storing on one or more server computers multiple related files accessible by the client device to, based on parsing of the control information file, form a media presentation from the multiple related files.

18. The method of claim 17, wherein the control information file is an XML file.

19. The method of claim 18, wherein the XML file identifies multiple alternative files corresponding to a given segment of the media presentation.

20. A client device for forming a media presentation from multiple related files stored on server computers within a computer network, comprising:

means for downloading files to the client device;  
means for parsing a control information file; and  
means for, based on parsing of the control information file:  
retrieving a first file and using contents of the first file to begin a media presentation;  
concurrent with the media presentation, retrieving a next file;  
and  
using content of the next file to continue the media presentation.

21. The method of claim 20, wherein the control information file is an XML file.

22. The method of claim 21, wherein the XML file identifies multiple alternative files corresponding to a given segment of the media presentation, the means for retrieving comprising means for selecting and retrieving one of the multiple alternative files.

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storing on a server computer a control information file of a format to be parsed by a client device; and  
storing on one or more server computers multiple related files accessible by the client device to, based on parsing of the control information file, form a media presentation from the multiple related files.

18. The method of claim 17, wherein the control information file is an XML file.

19. The method of claim 18, wherein the XML file identifies multiple alternative files corresponding to a given segment of the media presentation.

20. A client device for forming a media presentation from multiple related files stored on server computers within a computer network, comprising:  
means for downloading files to the client device;  
means for parsing a control information file; and  
means for, based on parsing of the control information file:  
retrieving a first file and using contents of the first file to begin a media presentation;  
concurrent with the media presentation, retrieving a next file;  
and  
using content of the next file to continue the media presentation.

21. The method of claim 20, wherein the control information file is an XML file.

22. The method of claim 21, wherein the XML file identifies multiple alternative files corresponding to a given segment of the media presentation, the means for retrieving comprising means for selecting and retrieving one of the multiple alternative files.

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**X. APPENDIX: RELATED PROCEEDINGS**

NONE

**XI. APPENDIX: EVIDENCE**

NONE

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**X. APPENDIX: RELATED PROCEEDINGS**

NONE

**XI. APPENDIX: EVIDENCE**

NONE